

Report to the Board of Adjustment

Prepared by the Maricopa County Planning and Development Department

Case: BA2005108

Variance

Hearing Date:

August 17, 2005

Agenda Item:

12

Supervisory District:

3

Applicant:

Barbara Saurin

Property Owner:

Robert & Rita Raudman

Request:**Variances to Permit:**

- 1) An existing detached accessory structure (hay barn) to setback 11 feet from the side (west) property line where 30 feet is the minimum required,
- 2) An existing detached accessory structure (horse barn) to setback 15 feet from the side (west) property line where 30 feet is the minimum required,
- 3) An existing detached accessory structure (horse barn) to setback 40 feet from the front (south) property line where 65 feet is the minimum required; and
- 4) An existing detached accessory structure (horse shade) eave overhang to setback 3 feet into the required rear yard where 1 foot is the maximum allowed in the Rural-43 zoning district.

These variances are requested from the following Zoning Ordinance Section(s):

- 1) & 2) Section 503, Article 503.4.2
- 3) Section 503, Article 503.4.1a
- 4) Section 1110, Article 1110.6.2

Site Location:

4420 E. Morning Star Lane – Tatum and Dynamite Blvds.
(Cave Creek area)

Site Size: 47,886 square feet (1.10 acres)

Existing Zoning: Rural-43

Current Use: Equestrian uses

**Citizen
Support/Opposition:** None known

**Staff
Recommendation:** Deny

Existing On-Site and Surrounding Zoning:

1. On-site: Rural-43
North: Rural-43
South: R1-8 (Phoenix)
East: Rural-43
West: Rural-43

Existing On-Site and Surrounding Land Use:

2. On-site: Equestrian uses
North: Single-family residence
South: Morning Star Lane/vacant
East: Single-family residence
West: Single-family residence

Background:

3. **August 9, 1979:** The parent parcel (**212-12-004**) was split to create parcels **212-12-004A, -004B, -004C, -004D** and **-004E** under docket **13514-261**.
4. **July 13, 1984:** Parcel **212-12-004E** was split to create parcels **212-12-004H** and **-004J** under docket **84-0306913**.
5. **October 15, 1993:** The current owners took possession of parcel **212-12-004H** via a Deed of Trust recorded under docket **93-0702897**.
6. **February 24, 2000:** Parcel **212-12-004H** was split to create three parcels **212-12-004S, -004U** and **-004T**, the subject site, by the current owners via a Warranty Deed recorded under docket **00-0133250**.

7. **March 2, 2005:** A complaint was received and violation case **V200500347** was opened by the Code Enforcement Division for construction without a zoning clearance/building permit/drainage permit.
8. **May 27, 2005:** The applicant had a pre-application meeting with the Planning Department staff.
9. **July 1, 2005:** The applicant applied for these variance requests.

Findings:

10. **Maricopa County Department of Transportation:** No response at the time this report was written.
11. **Flood Control District:** No objection to this variance request (see attached memo).
12. **Environmental Services Department:** No objection to this variance request (see attached memo).

Site Analysis:

13. The subject site is a rectangular shaped lot measuring approximately 145 feet in width and 330 feet in length for a total area of 47,886 square feet. The property takes access directly from Morning Star Lane to the south, which is an unimproved dirt road within the easement. The driveway to access this site is via the adjacent parcel to the east, which is also owned by the owners. There is a 25-foot wide ingress/egress and public utilities easement along the entire width of the southern property line. The site is level and free of any pronounced topographical features although there is a minor wash which traverses the northern portion of the site from east to west.
14. The property is currently developed with a 238 square foot horse shade, an 874 square foot hay barn, a 912 square foot hay/horse trailer storage building and a 2,515 square foot horse barn. The site is enclosed on the southern and western property lines by chain link fencing, the northern property line is a mixture of CMU block wall and chain link fence and the eastern property line is open to the adjacent parcel. Staff was unable to find record of zoning clearances and/or building permits for any of the detached accessory structures and the owner has been informed that they will need to apply for as-built permits, regardless of the outcome of this variance case, if they intend to keep any of the structures.

(aerial photo on following page)



Aerial view of subject site and surrounding area

15. The following table is included to illustrate and contrast the standards for the underlying zoning district with those proposed by the applicant.

Standard	Rural-43 (Zoning District)	Proposed Standard
Front Yard Setback	65-feet**	40-feet
Rear Yard Setback (accessory structure)	3-feet	26-feet
Side Yard Setback	30-feet	11-feet & 15-feet
Street Side Setback	20-feet	N/A
Maximum Height	30-feet/2 stories	***
Minimum Lot Area	43,560 sq. ft.	47,886 sq. ft.
Minimum Lot Width	145-feet	145-feet
Lot Coverage	15%	9.48%
Accessory eave overhang setback	1-foot	3-feet

*Standards indicated in **bold** do not meet minimum base zoning standards.

**The front setback for this lot is 65-feet (40-foot setback + 25-foot easement).

***Information was not provided by the applicant.

Land Use Analysis:

16. The subject site is located in a Class I county island in the northeastern portion of the County surrounded by the City of Phoenix. Dynamite Blvd. is approximately 0.75 miles to the north and Tatum Blvd is approximately 0.50 mile to the east of the subject site. The City of Phoenix borders the property just south of Morning Star Lane with the master planned community of Tatum Ranch located one mile north and northeast of the site.
17. The immediate area around the subject site has been developed though the lot splitting process although there are many recorded subdivisions located adjacent to the site and in the general area. The immediate area is zoned Rural-43 (County) with the surrounding areas zoned Rural-43 (County) and R1-6, R1-8, R1-10, R1-18 and R-2 (Phoenix). The Pinnacle Vista subdivision is located near the site and in the unincorporated County while Diamond Creek, Tatum Highlands, Tatum Ridge, Tatum Vista and Tesoro are in the City of Phoenix.
18. Staff research indicates that five Board of Adjustment cases have been heard within one mile of the subject site and of these five; four were relevant to this case. Their summaries are as follow:
 - Case **BA2004040** was a variance request to permit an existing detached accessory structure (covered holding pen) to setback 24 feet from the side (north) property line where 30 feet is the minimum required in the Rural-43 zoning district. The request was approved by the Board of Adjustment with stipulations. The property is located at 27413 N. 40th Street approximately 0.60 miles northwest of the subject site.
 - Case **BA2003071** was a variance request to permit an existing detached accessory structure (barn) to setback 16 feet from the side (south) property line where 30 feet is the minimum required in the Rural-43 zoning district. The request was approved by the Board of Adjustment with stipulations. The property is located at 27813 N. 44th Street approximately 0.66 miles north of the subject site.
 - Case **BA2002007** was a variance request to permit an existing detached accessory structure (stable) to setback 68 feet from the side (east) property line where 100 feet is the minimum required in the Rural-43 zoning district. The request was approved by the Board of Adjustment with stipulations. The property is located at 4125 E. Pinnacle Vista Drive approximately 0.50 miles northwest of the subject site.

- Case **BA2000044** was for variance requests to permit: 1) An existing garage to setback 20 feet from the side (west) property line where 30 feet is the minimum required; and 2) an existing lot width of 137.50 feet where 145 feet is the minimum required in the Rural-43 zoning district. The requests were approved by the Board of Adjustment with stipulations. The property is located at 27424 N. 44th Street approximately 0.50 miles northwest of the subject site.

Plan Analysis:

19. The applicant originally requested two variances with this application for the existing detached accessory structures. Staff's review of the site plan submitted by the applicant revealed two additional variances. The original variance requests are as follows:

- 1) An existing detached accessory structure (hay barn) to setback 11 feet from the side (west) property line where 30 feet is the minimum required; and
- 2) An existing detached accessory structure (horse barn) to setback 15 feet from the side (west) property line where 30 feet is the minimum required in the Rural-43 zoning district.

These two variances were added by staff:

- 3) An existing detached accessory structure (horse barn) to setback 40 feet from the front (south) property line where 65 feet is the minimum required; and
- 4) An existing detached accessory structure (horse shade) eave overhang to setback 3 feet into the required rear yard where 1 foot is the maximum allowed in the Rural-43 zoning district.

20. Staff would like to call attention to the original yard orientations on the 3.878 acre parcel (212-12-004H) which had the front yard along the western property line, the rear yard along the eastern property line and the side yards were designated by the north and south property lines. The yard orientations changed after parcel (212-12-004H) was split into three lots on February 24, 2000. The three parcels now have their front yards adjacent to the southern property line, their rear yards along the northern property line while the side yards are designated as the west and east property lines of the respective parcels.

21. The first request is to allow an existing detached accessory structure (hay barn) to setback 11 feet from the side (west) property line where 30 feet is the minimum required. This request came about due to a code violation regarding construction without a zoning clearance/building permit. The property in question is relatively flat and free of any notable terrain features that might restrict the location of an accessory structure. In addition, the property is over an acre in size providing adequate room to

locate the structure while still being within the buildable portions of the property. Staff was unable to find any existing building permits for this structure and the owner acknowledges that they constructed the structure without any permits. Since this variance request was self-created and alternatives are available, staff's opinion is there are no hardships that exist to justify the current location and construction of the structure in question. Staff recommends that the owner find an alternative location for the structure and that the Board deny this variance.

22. The second request, to allow an existing detached accessory structure (horse barn) to setback 15 feet from the side (west) property line where 30 feet is the minimum required, is similar in nature to the first request. Staff was unable to find a hardship that would justify recommending a variance for this particular structure or the existence of a building permit. The owner states in the variance supplemental questionnaire narrative that this structure was present they took possession of the 3.878 acre parcel (212-12-004H) in October 1993. This variance request is self-created; first by a previous owner constructing the structure without a permit and then again when the current owners split the lot into three parcels thereby changing the yard designations for the new parcels. Again, the property is over an acre in size and lacks any notable terrain characteristics that would justify the current location of the structure; therefore staff recommends that the Board deny this variance request.
23. There is also a small lean-to structure attached to the horse barn. On the photos submitted by the applicant, she states that this structure has been removed. This structure must be removed, since a variance was not applied for, because it is also in the side (west) setback. Staff has no reason to believe that the owner will not actually tear down the shed but has no way to enforce the owner to actually do so beyond withholding the building permits for the as-built detached accessory structures. With that said, staff is recommending adding a stipulation that the lean-to structure must be removed and visual proof provided, before any as-built detached accessory structures can be issued a building permit.
24. The third request is to allow an existing detached accessory structure (horse barn) to setback 40 feet from the front (south) property line where 65 feet is the minimum required. The 65 feet is needed in this case because of the combination of the required 40-foot front yard setback and for a 25-foot right-of-way easement. This easement was recorded under docket 13953 pages 916-918 on October 10, 1979. This request, as with the two previous requests, does not have any associated hardships that would justify the granting of this variance. As noted above, the site is large enough to accommodate this structure and no building permits were found for its construction. Staff recommends that the owner find an alternative location for this structure and that the Board deny this variance.

25. The fourth request is to allow an existing detached accessory structure (horse shade) eave overhang to setback 3 feet into the required rear yard where 1 foot is the maximum allowed. The horse shade is located in the northeast corner of the parcel, 26 feet from the rear (north) property line and 12 feet from the side (east) property line. While the horse shade meets required rear and side yard setbacks, the horse shade itself has an eave overhang that is 3 feet into the required rear yard. The Maricopa County Zoning Ordinance requires that projections, such as an eave overhang, for an accessory structure in the required rear yard shall not exceed one foot beyond the walls of the accessory structure itself. The eave overhangs a total of three feet beyond the wall of the horse shade, encroaching into the required rear yard setback by two feet. As with the other three requests, staff was unable to find a hardship that would justify recommending a variance for this particular structure or the existence of a zoning clearance or building permit. Staff recommends that the Board deny this variance.
26. Staff is sympathetic to the owner's request, but is unable to find a specific hardship that would justify granting these variances. The hardships were self-created by the owner's failure to obtain zoning clearances/building permits for the accessory structures and then once again with the creation of the three new parcels, which in turn changed the yard designations for the new parcels thus creating some of these variance requests. The site in question is relatively flat and free of any notable terrain features that might restrict the location of an accessory structure(s). In addition, the property is more than an acre in size permitting adequate room to locate the structures within the buildable portions of the property. Alternatives available to the owner are relocating the structures and/or demolishing and rebuilding the structures within the required setbacks or yards.

Recommendation: (BA2005108)

27. Staff recommends **denial** of these variance requests based on the following:
- There is no hardship associated with these requests. Any hardship in this case is self-created due to the failure to obtain permits for the structures in question.
 - Granting these requests would confer a special privilege to the owner.
 - There are reasonable alternatives available to the owner that would eliminate the need for these variances.
 - These requests conflict with the intent of the Zoning Ordinance and may have a negative impact on surrounding properties.

28. If the Board finds that a reasonable use of the property cannot be made without these variances, then these requests may be approved, subject to the following stipulations:
- a) General compliance with the site plan dated June 25, 2005 and stamped received July 1, 2005.
 - b) The owner shall obtain all necessary permits and/or clearances for the as-built structures within 120 days of Board approval.
 - c) The applicant shall remove all unpermitted structures that are not needed before the issuance any building permits and/or zoning clearances.

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Attachments: Case Map BA2005108
Zoning Map
Assessor Map
Site Plan
Lot Split Plat
Application
Supplemental Questionnaire Narrative (2 pages)
Photographs (11 pages)
Environmental Services Memo
Flood Control District Memo